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Supreme Court of the United States

OCTOBER TERM, 1942.

No. 1076. 89

JACKSONVILLE PAPER COMPANY, A CORPORATION,
PETITIONER,

VS.

THE UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CUSTOMS AND PATENT APPEALS.

REPLY BRIEF FOR PETITIONER.

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QUESTIONS PRESENTED.

At pages 2, 3 and 12 of our petition for certiorari we stated three questions for consideration. The government's brief, page 2, states two questions. First

> "Whether the Court of Customs and Patent Appeals *improperly* found facts contrary to the findings of the lower court."

This manner of stating the question implies a concession that the Court of Customs and Patent Appeals did find facts contrary to the findings of the trial court but did not do so "improperly." Our petition (pages 2 and 15) and our supporting brief (pages 22 and 26) took the straightout position that the Appellate Court found the facts contrary to the findings of the trial court on the subject of *duress* and that the Appellate Court had no authority so to do either under the statute or under the

general system of practice prevailing from time immemorial.

The second question as stated in the government's brief (page 2) is whether the importer should be bound by the "entered value" when that value was shown by the entry because

"unaware of legal remedies available."

We maintain that no such question is presented by the record in this case. We maintain that there was no such unawareness and that no remedies existed whereby the petitioner-importer was able to overcome the actual duress imposed by the customs officials. The real situation was stated by our questions II and III (pages 3 and 12 of our petition) and pages 26 to 31 of our supporting brief.

STATEMENT OF FACTS.

The "statement" contained in the government's brief (pages 2 to 4) is in some material respects erroneous.

In the first place, near top page 3, it is said:

> "after discussing the matter with representatives of the office of the collector the petitioner added to the export value * * * and entered the paper at the higher value."

The real record in this case is that it was not merely a matter of discussion. On the contrary it was a heated argument resulting from the demand of the importer to be permitted to make the entry on invoice basis and the refusal of the customs officials to accept any such entry (See testimony of Reinoehl, bottom R. 36 and bottom R. 42). Also testimony of McGehee (R. 45 to 49). Also testimony of Bobbitt (bottom R. 50 and top R. 51). Further on the subject of the heated argument see testimony of McGehee (R. 64 and 65).

The first half of page 3 of the government's brief also says

> "The appraiser then appraised the paper on the basis of the foreign value."

This statement is misleading for the reason that it implies that the appraisement followed shortly after the alleged discussion, whereas, the fact is that the appraisement on the entry of April 17th, 1936, did not come through until June 5th, 1936, as shown by photostatic copy of notice (page 8 of our petition) and photostatic copy of demand for return of merchandise (page 10 of our petition). During the interval between the date of entry and the date of the appraisement the importer had been required to give a "redelivery bond" (see testimony of Diamond, bottom R. 59) because all these entries were "consumption" entries (See testimony of Reinoehl, R. 40) and see copy of the entry that was refused on the April shipment (R. 16) and copy of the amended entry which the importer was compelled to make before it could get possession of the goods (R. 17). These matters will be somewhat amplified in the subsequent brief argument. Government counsel (page 4 of government's brief) concedes that the trial court

> "expressly found that the weight of the evidence indicated that the customs officers influenced or *required* the importer to enter the paper at higher values."

Neither the importer nor the customs officials knew of any test case pending whereby a "duress certificate" could have been filed (see R. 88).

The statement for the government passes over entirely the third question which we stated page 12 of our petition, which was in substance whether the trial court or the appellate court committed grievous error in disclaiming all power and jurisdiction to give relief though conceding that the importer was justly entitled to relief and that the entries had been made under duress.

ARGUMENT.

Point I. The Trial Court Correctly Found That the Entries Involved in These Protests Were Made under Duress and the Appellate Court Was Without Authority to Find Otherwise.

Since government counsel have attempted to dissipate the findings of the trial court on the ground of the importer's alleged ignorance and on the ground of alleged existing remedies whereby the duress could have been obviated we think it important to make a firsthand examination of what the testimony actually was and upon which the trial court based its findings.

To begin with, the testimony of Reinoehl (R. 34) and other witnesses is undisputed to the effect that the importation of March, 1936, was entered by the petitioner and accepted by the customs officials on the basis of "invoice value." Therefore when Reinoehl, auditor for the petitioner, and McGehee, the president of the petitioner, attempted to enter the importation of April, 1936, they naturally expected to make the entry on the same basis and were insistent upon so doing. At bottom R. 35 Reinoehl testified as to the April importation that he originally prepared the entry

"on the basis of the invoice price."

That form of entry was then put in evidence as Exhibit No. 2. At R. 36 the following question and answer were given concerning that form of entry:

"Q. When you presented that entry, Exhibit 2, will you state what transpired?

A. I was told by the customs officials they would not accept the entry on the basis of the invoice price but it must be based on the foreign market value and

that the paper (meaning the goods in question) would not be released until the entry was so made."

Further questions and answers then ensued.

"Q. Did you then prepare a different form of entry? A. I then prepared the entry on the foreign market value."

Copy of the new form of entry was then put in evidence as Exhibit 3. The protest with respect to the April importation appears R. 14 and 15 and Exhibits 1 and 2 to that protest were respectively the same as Exhibits 2 and 3 filed in evidence along with the testimony of Reinoehl. A comparison of those two exhibits shows that the importer was required to add $4,921 to the value in order to make the entered value $19,945 as representing the supposed "foreign market value." No foreign market value then existed as shown by Exhibit 5 (R. 71) and as later adjudged by the decision of Judge Keefe February 26th, 1940 (R. 66 to 69). The witness Reinoehl repeated his testimony in similar positive language (bottom R. 42) to the effect that the customs officials absolutely required the preparation and filing of a new form of entry using supposed foreign market value as the basis therefor. The witness McGehee, president of petitioner, gave equally positive testimony. At R. 45 he said:

"Mr. Reinoehl, our auditor, tendered the entry papers on this shipment (meaning the April importation) to the customs authorities, and he contacted me later stating that they had refused to let him enter this shipment of paper on the basis of the invoice price, and that they would not release the paper until the entry papers were amended to include what they considered to be the foreign market value, and the entry had been made on that basis."

The witness McGehee then details how, after notice from Reinoehl, he went to Mr. Bobbitt's office, the deputy collector, and talked with him and Mr. Diamond, acting ap-

praiser, for about an hour. He was asked these questions and made these answers:

> "Q. What did he say with reference to accepting that entry (meaning the April entry) on the basis of the invoice price?
>
> A. He said they would not accept it, or release the paper on that basis.
>
> Q. If you had been unable to receive delivery of this particular paper, what effect, if any, would it have had on the bag manufacturing plant of your company?
>
> A. It would have closed down within ten days."

This explains why all these entries were known as "consumption" entries (see exhibits to the first protest, R. 16 and 17). Again, from McGehee's testimony (pages 48 and 49) we find this on cross examination by government counsel:

> "XQ. Will you give us all of that conversation, please?
>
> A. Well, we contended that the proper basis for entry was the invoice price less the non-dutiable items, and we attempted to make the entry on that basis and we were told emphatically it would not be accepted.
>
> XQ. Your understanding was that unless you changed the entry to meet the views of Mr. Bobbitt and Mr. Diamond you could not get your merchandise?
>
> A. No understanding about it; they stated that emphatically.
>
> XQ. That was the only condition under which they would permit you to take delivery of the importation?
>
> A. That is correct."

The testimony of Mr. Bobbitt, the deputy collector (R. 50 and 51), in substance corroborates the testimony of McGehee. Among other things he said:

> "I remember, as Mr. McGehee will very readily recall, *that he said in so many words he resented customs officials having anything to do with the way he should file an entry and at what value he should file it.* * * * Mr. McGehee gave me the idea of being an excellent business man who had bought his goods at what he knew was a definite price, and *he intended to make entry at that price regardless of what might be the position of the United States customs officials,* or of any law or regulation governing it" (Italics ours).

This testimony showed very clearly that the whole controversy—the "heated conversation" (R. 51)—related to the *basis of value* upon which the entry should be made and not a question of the amount of the redelivery bond which would have to be given irrespective of the form of the entry or the value stated in the entry.

The testimony given by Mr. Bobbitt (top R. 53) is utterly inconsistent with other testimony given by him. He there claimed that he gave Mr. McGehee to understand

> "that he might take advantage of the duress provision by filing this duress certificate along with his entry"

whereas at R. 52 and elsewhere in the testimony of Bobbitt he admitted that he knew of no case pending on appeal which might have been used as the basis for filing a "duress certificate." Therefore the position heretofore taken by the government that some remedy existed by filing a duress certificate was wholly without support.

The witness Diamond undertook to claim that there was no controversy about the value for the entry but that the discussion related to the amount of the bond; that a new bond would have to be given for a higher amount, but at R. 59 he conceded that a "redelivery bond" had to be given in either case and the fact is that a redelivery bond was given as to each of these importations and when the

appraisements began to come through as evidenced by the notices contained in our petition (R. 8 and R. 10) the collector demanded a return of the merchandise if the importer failed to pay the additional amount of duty assessed on the higher supposed "foreign market" value. When Reinoehl was recalled in rebuttal (R. 62 and 63) he testified positively that the government officials did not at any time say they would accept the entry on invoice value if a bond in some larger amount was given. At bottom R. 63:

> "Q. Did you say they did not tell you you must put up a bond in a higher value?
>
> A. We did have to put up a bond at a higher value after the amendment, but we were not informed we could make the entry at the invoice price if the bond were placed at a higher value."

Mr. McGehee testified to like effect on rebuttal (R. 64 and 65):

> "Q. Did Mr. Bobbitt or Mr. Diamond inform you you could make the entry based on the invoice value provided you put up a bond in a sufficient amount?
>
> A. He did not * * * I told him if I wanted to import a load of bull frogs it was his job as a government official to provide the data under which I could make such importation and entry.
>
> Q. Did you get hot under the collar at that conversation?
>
> A. Yes."

R. 65, McGehee further said:

> "As a matter of fact, we were helpless. Mr. Bobbitt said so. * * * It is unbelievable what Mr. Bobbitt did, the attitude he took. * * * I didn't appreciate it a bit."

The letter filed in connection with the testimony of Reinoehl, Exhibit 5 (R. 71), also corroborates Reinoehl and McGehee because that letter clearly stated the basis of the importer's contention that it was entitled to make these

entries on the basis of invoice or export value. This was so because it had been determined by resolution of the Swedish Paper Mills Association that the Swedish market was a "controlled market." In passing, the letter shows that the petitioner's president and auditor were not so ignorant as government counsel claim. On the contrary they knew what their rights were and that brought on the "heated discussion" when the customs officials undertook to deny those rights. Nevertheless they were helpless and had to do as the customs officials demanded in order to get custody of the merchandise and prevent a shutdown in their business.

We submit therefore that the trial court was eminently correct in finding as stated bottom R. 83 that the customs officials refused to accept these entries on the basis of invoice values. The trial court was further correct in concluding that the weight of the evidence was with the testimony of Reinoehl and McGehee. Such being the case the appellate court had no authority to make findings to the contrary. In attempting so to do the court violated those principles laid down by this court in *McCaughn* v. *Real Estate Land, etc., Co.*, 297 U. S. 606, cited page 22 of our brief supporting the petition. The appellate court also violated the express language of 19 U. S. C. A., Sec. 1501, quoted in the addenda to our first brief and in addition the appellate court violated the principles now crystalized by Rule 52(a) of the Rules of Civil Procedure which among other things provides:

> "Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses."

At page 6 of the government brief counsel say:

> "The appellate court assumed the facts found by the trial court to be true, but reached the conclusion that those facts did not justify a holding that legal duress had been exerted, for the reason that peti-

> tioner had remedies other than the raising of the values both to obtain possession of its merchandise and to avoid any penalties that might be imposed."

The only remedy suggested by the government's brief is found page 8 of the brief to the effect that the petitioner might have secured release of the merchandise by the filing of "an appropriate bond." It is then stated:

> "It may be that petitioner did not understand its rights in this respect."

That sort of argument cannot avail to dissipate the positive testimony given by Reinoehl and McGehee supported by the documentary evidence, nor can it dissipate the positive findings of fact made by the trial court. The evidence is very clear that the argument and the controversy did not have to do with the amount of any redelivery bond. On the contrary it had to do with the refusal of the customs officials to release the goods on any sort of bond unless the form of the entry was changed so as to show some supposed "foreign market value."

Point II. When, As Appears by the Evidence and the Findings of the Trial Court, the Entries in Question Were Made under Duress the "Entered Value" Was Void and Not Binding under 19 U. S. C. A., Sec. 1503(a).

This point was presented page 3 of our petition and discussed beginning page 26 of our brief supporting the petition. Government counsel make no reply to that portion of our argument nor do they make any comment on the cases relied upon by us as entitling the petitioner to relief under the protests filed in this case.

Point III. The Customs Court As the Trial Court and the Court of Customs and Patent Appeals As the Appellate Court Had Ample Authority and Jurisdiction under the Law to Give the Petitioner Relief by Ordering a Reliquidation of These Entries to the End That the Moneys Unjustly Exacted from the Petitioner Might Be Refunded.

At pages 30 and 41 of our first brief we cited ample authority to sustain this proposition and no reply thereto has been made by government counsel.

Conclusion.

It is now respectfully submitted that the reasons for allowance of the writ and stated pages 15 and 16 of our petition are perfectly sound. That the writ should issue and the decree complained of be reversed.

Respectfully submitted,

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